Supreme Court, U.S.
FILED
04 275 AUG 24 2004
OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,
Petitioner,

v.

MATTHEW MARTIN DOBRIN,
Respondent.

On Petition For Writ of Certiorari
To The Supreme Court of Florida

PETITION FOR WRIT OF CERTIORARI

ENOCH J. WHITNEY
General Counsel

HEATHER ROSE CRAMER
Assistant General Counsel
Department of Highway Safety
and Motor Vehicles
Florida Bar No. 0901600
6801 Lake Worth Road, Suite 230
Lake Worth, FL 33467
(561) 433-3645
COUNSEL FOR PETITIONER

Riverside Printing, L.L.C., 4939 Tchoupitoulas, N. O., LA 70115, (504) 897-5000

QUESTION PRESENTED

Whether The Florida Supreme Court's Test For Evaluating The Constitutionality Of A Vehicle Stop Is Consistent With The Fourth Amendment As Interpreted By This Court In Terry v. Ohio, 392 U.S. 1 (1968) and Whren v. United States, 517 U.S. 806 (1996).

TABLE OF CONTENTS

QUESTION PRESENTED.....i

TABLE OF CONTENTS.....ii

TABLE OF AUTHORITIES.....iv

OPINIONS BELOW.....1

JURISDICTION.....1

CONSTITUTIONAL PROVISION INVOLVED.....1

STATEMENT OF THE CASE.....2

REASONS FOR GRANTING REVIEW.....8

I. THE FLORIDA SUPREME COURT'S MISUNDERSTANDING OF THIS COURT'S OPINIONS INTERPRETING THE CONSTITUTIONALITY OF A FOURTH AMENDMENT INTRUSION HAS THROWN FLORIDA'S SEARCH AND SEIZURE LAW INTO TURMOIL.....8

TABLE OF CONTENTS (Continued)

A. The Florida Supreme Court Evaluated The Reasonableness Of Dobrin's Traffic Stop Based On The Actual Motivation Of The Stopping Police Officer Rather Than Applying The Correct Objective Analysis Set Forth By This Court In Terry and Whren.....9

B. The Effect Of The Florida Supreme Court's Application Of A Subjective Test Will Impact Florida Law Well Beyond The Arena Of A Driver's License Suspension.....13

II. THE EFFECT OF THE FLORIDA SUPREME COURT'S DOBRIN OPINION IS TO REJECT A FINDING THAT THE REASONABLENESS OF A FOURTH AMENDMENT INTRUSION MAY BE BASED ON REASONABLE SUSPICION. 14

CONCLUSION..... 18

TABLE OF AUTHORITIES

CASES

Damato v. State,
64 P.3d 700 (Wyo. 2003) 15

Delaware v. Prouse,
440 U.S. 648 (1979) 8
Department of Highway Safety
and Motor Vehicles v. Dobrin,
29 Fla. L. Weekly Supp. S80a
(Fla. Feb. 19, 2004).....1, 7

Department of Highway Safety
and Motor Vehicles v. Dobrin,
874 So.2d 1173 (Fla. May 27, 2004).....1, 7, 10, 11, 12, 16

Department of Highway Safety
and Motor Vehicles v. Dobrin,
829 So.2d 922 (Fla. 5DCA 2002) 1, 6

Dobrin v. Department of Highway Safety
and Motor Vehicles,
9 Fla. L. Weekly Supp. 355a
(Fla. 7th Cir. Ct. March 8, 2002).....1, 5, 9, 10

Ellis v. State,
755 So.2d 767 (Fla. 4th DCA 2000).....16

Freeman v. Texas,
62 S.W.3d 883 (Tex.Ct. App.2001).....15

TABLE OF AUTHORITIES (Continued)

Gaddis ex rel. Gaddis v. Redford TP,
364 F. 3d 763 (6th Cir. 2004).....17

Holland v. State,
696 So.2d 757 (Fla. 1997) 6

Jones v. State,
842 So.2d 889 (Fla. 2d DCA 2003).....16

Maryland v. Macon,
472 U.S. 463, 105 S.Ct. 2778, (1985) 8

McGaughey v. Oklahoma,
37 P.2d 130 (Okla.Crim.App. 2001).....15

Michigan Dep't of State Police v. Sitz,
496 U.S. 444, 110 S.Ct. 2481,
110 L.Ed.2d 410 (1990) 8

People v. Gonzalez,
204 Ill.2d 220, 789 N.E. 260,
273 Ill. Dec. 360 (Il. 2003) 15

Scott v. United States,
436 U.S. 128, 98 S.Ct. 1717 (1978) 8, 14

State v. Cortez,
449 U.S. 411 (1980) 8

State v. Daniel,
665 So.2d 1040 (1995) 9

TABLE OF AUTHORITIES (Continued)

State v. Fields,
662 N.W. 2d 242 (N.D. 2003).....15

State v. Malone,
683 So.2d 1 (Wis. 2004).....15

State v. McNeal,
666 So.2d 229 (Fla. 2d DCA 1995) 6

State v. Pollard,
625 So.2d 968 (Fla. 2d DCA 1993) 6

Terry v. Ohio,
392 U.S. 1 (1968).....9, 13, 15, 18

United States v. Brignoni-Ponce,
422 U.S. 873, 884, 95 S.Ct. 2574,
45 L.Ed. 2d 607 (1975).....8

United States v. Callerman,
273 F.3d 1284 (10th Cir. 2001).....17

United States v. Cortez,
449 U.S. 411 (1980).....8

United States v. Botero-Ospina,
71 F.3d 783 (10th Cir.1995).....15

United States v. Jones,
269 F.3d 919 (8th Cir. 2001).....15

TABLE OF AUTHORITIES (Continued)

United States v. Ramos-Caraballo,
375 F.3d 797 (8th Cir. 2004).....17

United States v. Vercher,
358 F.3d 1257 (10th Cir. 2004).....17

Walker v. State,
2004 WL 1753406 (Mis. Aug. 5, 2004).....15

Whren v. United States,
517 U.S. 806 (1996) 8, 9, 12, 14, 15, 16, 17, 18

FEDERAL STATUTES

§ 28 U.S.C. 1257 (a).....1

STATE STATUTES

§ 316.089, Florida Statutes.....3

§ 316.193, Florida Statutes.....2, 4

§ 316.1932, Florida Statutes.....2, 3

§ 322.2615, Florida Statutes 2, 4

§ 322.2615 (1)(a), Florida Statutes 3

§ 322.2615 (1)(b)(3), Florida Statutes 2

TABLE OF AUTHORITIES (Continued)

§ 322.2615 (2), Florida Statutes 3

§ 322.2615(6)(b), Florida Statutes.....4

§ 322.2615 (7), Florida Statutes.....4

§ 322.2615 (7)(b), Florida Statutes 4

§ 322.2615(11), Florida Statutes.....3, 4

FLORIDA ADMINISTRATIVE CODE

Rule 15A-6.....4

OPINIONS BELOW

The revised decision of the Florida Supreme Court (App. B, *infra*, A-3-12)[1] from which Petitioner seeks to invoke the discretionary review of this Court is reported at 874 So.2d 1171 (Fla. 2004). The original opinion of the Florida Supreme Court (App. D, *Infra*, A-22-30) is reported at 29 Fla. L. Weekly S80a. (Fla. Feb. 19, 2004). The opinion of the Fifth District Court of Appeal is reported at 829 So.2d 922 (Fla. 5DCA 2002) (App. E, *infra,* A-31-33*)*. The opinion of the Seventh Judicial Circuit Court in and for Volusia County, Florida (App. F, *infra,* A-34-39) is reported at 9 Fla. Law Weekly Supp. 355a. (Fla. 7th Cir. Ct. March 8, 2002). The Final Order of License Suspension entered by the hearing officer (App.G, *infra*, A-40-43) is unreported.

JURISDICTION

The Florida Supreme Court entered its opinion on February 19, 2004. (App. B, *infra* 3-12). On May 27, 2004, the Florida Supreme Court denied the Department's Motion for Rehearing (App. A, *infra,* 1-2) but also issued a revised opinion. (App. D, *infra*, 22-30). The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The issue presented in this case involves the Fourth Amendment to the United States Constitution.

---

[1] Citations to materials contained in the Appendix to the Petition for Writ of Certiorari will be referred to as "App." followed by the appropriate exhibit and page number.

STATEMENT OF THE CASE AND FACTS

This case stems from the administrative suspension of a person's driving privilege for refusal to submit to a breath-alcohol test pursuant to § 322.2615, Florida Statutes.[2]

On September 2, 2001 at approximately 1:20 a.m., Officer Thomas of the Daytona Beach Shores Police Department was traveling northbound in the 2800 block of South Atlantic Avenue when he observed Dobrin traveling southbound from the 2700 block at a high rate of speed. (App. H, *infra*, A-44). The officer estimated Dobrin's speed at 50 miles per hour. Officer Thomas turned his vehicle around in an attempt to pace Dobrin's truck. (App. H, *infra*, A-44). During the attempted pace of the truck, Officer Thomas observed the vehicle drift to the right then correct itself in a quick manner. Officer Thomas observed this driving pattern several times and conducted a traffic stop. (App. H, *infra*, A-44).

---

[2] § 322.2615, provides: (1)(a) A law enforcement officer or correctional officer shall, on behalf of the department, suspend the driving privilege of a person who has been arrested by a law enforcement officer for a violation of s. 316.193, relating to unlawful blood-alcohol level or breath-alcohol level, or of a person who has refused to submit to a breath, urine, or blood test authorized by s. 316.1932. The officer shall take the person's driver's license and issue the person a 10-day temporary permit if the person is otherwise eligible for the driving privilege and shall issue the person a notice of suspension. If a blood test has been administered, the results of which are not available to the officer at the time of the arrest, the agency employing the officer shall transmit such results to the department within 5 days after receipt of the results. If the department then determines that the person was arrested for a violation of s. 316.193 and that the person had a blood-alcohol level or breath-alcohol level of 0.08 or higher, the department shall suspend the person's driver's license pursuant to subsection (3).

Upon making contact with Dobrin, Officer Thomas noticed that he had red, bloodshot eyes and an odor of alcohol on his breath. Dobrin performed field sobriety tests poorly. Officer Thomas then placed him under arrest for DUI. (App. H, *infra*, A-44-45). Dobrin was informed of the "implied consent warnings"[3] but still refused to submit to the breath test. (App. H, *infra*, A-45). Officer Thomas issued Dobrin a DUI citation for his refusal and suspended his driving privilege pursuant to s. 322.2615 (1)(a), Fla. Stat. (2001). (App. H, *infra*, A-45). Dobrin was also issued a citation for the civil traffic infraction of "failure to maintain a single lane."[4] (App. H, *infra*, A-45).

Officer Thomas timely filed his paperwork with the Department of Highway Safety and Motor Vehicles' (hereinafter the "Department") Clerk of the Bureau of Administrative

---

[3] §316.1932 (1)(a)1.a., Florida Statutes, provides: any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test...for the purpose of determining the alcoholic content of his or her blood if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages... The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for a first refusal, or for a period of 18 months if the driving privilege has been previously suspended as a result of a refusal to submit to such a test or tests.

[4] §316.089(1) Fla. Stat. provides:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent herewith, shall apply: (1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

Reviews pursuant to §322.2615(2) and Florida Administrative Code Rule 15A-6.013.[5] Dobrin requested a formal review of his driver's license suspension that was conducted on October 9, 2001, by Hearing Officer Clark. After careful consideration of the record evidence,[6] Hearing Officer Clark determined that the preponderance of the evidence supported Dobrin's suspension.[7] The Department informed Dobrin in an Order dated October 12, 2001, that the suspension of his driving privilege for refusal to submit to a breath test was sustained for a period of one year. (App. G, *infra*, A-40-43).

---

[5] The statutory framework of §322.2615 specifically allows the hearing officer to conduct the formal review based on reports of law enforcement officers, to determine if by a "preponderance of the evidence" there is sufficient cause to sustain, invalidate or amend a license suspension. §§ 322.2615 (7) and (11), Florida Statutes. This is a civil administrative proceeding.

[6] Although the legislature gave Dobrin the opportunity to subpoena witnesses, he did not subpoena any witnesses (including Officer Thomas) to his formal review. §§322.2615(6)(b) and (11).

[7] The scope of the formal review is limited to the following issues in a case where a driver is suspended for refusal to submit to a breath test:

1. Whether the arresting law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or controlled substances.
2. Whether the person was placed under lawful arrest for a violation of s. 316.193. (Florida's DUI statute)
3. Whether the person refused to submit to any such test after being requested to do so by a law enforcement or correctional officer; and
4. Whether the person was told that if he refused to submit to such test his privilege to operate a motor vehicle would be suspended for a period of one year, or in the case of a second or subsequent refusal, for a period of eighteen months. §. 322.2615(7)(b), Fla. Stat. (2001).

Dobrin filed a Petition for Writ of Certiorari with the Circuit Court of the Seventh Judicial Circuit in and for Volusia County, Florida, acting in its appellate capacity, challenging the Department's Order of License Suspension.[8] On March 8, 2002, Judge William C. Johnson, rendered an Order Granting Petition for Writ of Certiorari reversing the Department's administrative suspension of Dobrin's driver's license. Dobrin v. Department of Highway Safety and Motor Vehicles, 9 Fla. L. Weekly Supp. at 355a (Fla. 7th Cir. Ct. Mar. 8, 2002). The circuit court held, "[t]his Court finds that it cannot uphold the [traffic stop of Dobrin's vehicle] on a basis of what the officer could have done, rather it must only analyze what in fact the officer did and why he did it." Dobrin, 9 Fla. L. Weekly Supp. at 356. The circuit court also held that "[t]he arrest report never states that the officer thought speeding was a reason for the stop, 'so the court may not engage in speculation that the officer's actions in stopping the vehicle are now justified by the fact that there may have been speeding, when in fact the reason articulated for the stop was the "failure to maintain a single lane" facts'." Dobrin, 9 Fla. L. Weekly Supp. at 356. In addition, the circuit court refused to consider impairment as a reason for the stop holding, "the arrest report never states that the officer thought impairment was a reason for the stop. As such, this Court may not engage in speculation that the stop may have been justified by the fact of intoxication or impairment when in fact the reason articulated for the stop was Failure to Maintain a Single Lane." Dobrin, 9 Fla. L. Weekly Supp. at 356.

The Department filed a Petition for Writ of Certiorari with the Fifth District Court of Appeal. On September 6, 2002, the District Court issued an Order granting the Department's

---

[8] §322.31, Florida Statutes provides that final orders and rulings of the department shall be reviewable by a Petition for Writ of Certiorari to the circuit court.

Petition for Writ of Certiorari and quashing the Circuit Court's order. Department of Highway Safety and Motor Vehicles v. Dobrin, 829 So.2d 922 (Fla. 5th DCA 2002). (App. E, *infra*, A-31-33). The District Court wrote: "The issue is not why this particular officer conducted the traffic stop; the question should be whether the established facts would have caused a reasonable officer under the same circumstances to make the stop." Id.[9] The District Court held that it was not unreasonable for an officer - who observed a truck traveling at a high rate of speed and unable to maintain a straight course - to stop the driver to check the safety of the vehicle or the health and capacity of the driver. Id.

Dobrin then sought review in the Florida Supreme Court. The Florida Supreme Court accepted jurisdiction on the grounds that the opinion of the Fifth District Court of Appeal was in conflict with its decision in Holland v. State, 696 So.2d 757 (Fla. 1997).[10] On February 19, 2004, the Florida Supreme Court entered its Opinion Quashing the decision of the Fifth District Court of Appeal and Reinstating the Circuit Court's Order

---

[9] The Fifth District Court of Appeal cited two decisions, State v. Pollard, 625 So.2d 968 (Fla. 2d DCA 1993) and State v. McNeal, 666 So.2d 229 (Fla. 2d DCA 1995) that predated this court's holding in Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.89 (1996). At the time Pollard and McNeal were decided, Florida still applied a "reasonable officer" test to determine the reasonableness of a search and seizure. State v. Daniel, 665 So.2d 1040 (1995).

[10] In Holland v. State, 696 So.2d 757 (Fla. 1997), the Florida Supreme Court abandoned "pretextual stop" case law. The Florida Supreme Court had to do so because Article 1, Section 12 of the Florida Constitution mandates that Florida's search and seizure law must be construed in conformity with Fourth Amendment as interpreted by the United States Supreme Court. Thus, once this Court decided Whren v. United States, 517 U.S. 806 (1996), the Florida Supreme Court had to change its "reasonable officer" test.

Quashing Dobrin's license suspension. Dobrin v. Department of Highway safety and Motor Vehicles, 29 Fla. L. Weekly S80a (Fla. Feb. 19, 2004). (App. D, *infra*, 22-30). The Department filed a timely Motion for Rehearing on March 4, 2004. (App. C, *infra*, A-13-21). On May 27, 2004, the Florida Supreme Court entered an Order Denying the Motion for Rehearing. (App. A, *infra*, A-1). Simultaneously, the Florida Supreme Court revised its February 19, 2004 opinion. (App. B, *infra*, A-3-12). In its revised opinion, the Florida Supreme Court held that the circuit court applied the correct law by limiting its analysis of the constitutionality of the detention to whether the stopping officer had probable cause to stop Dobrin for the reason stated in the officer's police report. Dobrin, 874 So.2d at 1173-74.

REASONS FOR GRANTING THE WRIT

I. THE FLORIDA SUPREME COURT'S MISUNDERSTANDING OF THIS COURT'S OPINIONS INTERPRETING THE CONSTITUTIONALITY OF A FOURTH AMENDMENT INTRUSION HAS THROWN FLORIDA'S SEARCH AND SEIZURE LAW INTO TURMOIL

The Fourth Amendment requires that search and seizures be reasonable. As Justice Rehnquist noted in Scott v. United States, 436 U.S. 128, 98 S.Ct. 1717 (1978), "[t]he language of the Amendment itself proscribes only "unreasonable" searches and seizures. Id. at 137. This Court has long held that an evaluation of the reasonableness of a search and seizure "turns on the objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time," and not on the officer's actual state of mind at the time the challenged action was taken. Maryland v. Macon, 472 U.S. 463, 470-471, 105 S.Ct. 2778, (1985) (quoting Scott, at 136).

The objective standard for evaluating a search or seizure under Fourth Amendment scrutiny applies to the stop of a vehicle and subsequent detention of the occupants. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.89 (1996); Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 454-455 (1990); United States v. Cortez, 449 U.S. 411, 417-418 (1980); Delaware v. Prouse, 440 U.S. 648, 653-654 (1979) ("stopping an automobile and detaining its occupants constitute a 'seizure' within the meaning of [the fourth and fourteenth] Amendments"). The seizure of a vehicle may be predicated on a showing of probable cause *or* reasonable suspicion, based on specific and articulable facts that a crime has or is being committed. United States v. Brignoni-Ponce, 422 U.S. 873, 884, 95 S.Ct. 2574, 45 L.Ed. 2d 607 (1975)(Officers stopping

vehicles on roving patrols must be "aware of specific articulable facts" that justify the stop.)

A. The Florida Supreme Court Evaluated The Reasonableness Of Dobrin's Traffic Stop Based On The Actual Motivation Of The Stopping Police Officer Rather Than Applying The Correct Objective Analysis Set Forth By This Court In Terry And Whren.

Even though the Florida Supreme Court revised its original opinion, the revised opinion is still in direct conflict with this Court's understanding of the Fourth Amendment. Specifically, pursuant to Whren v. United States, the constitutionality of a traffic stop does not turn on "the actual motivations of individual officers." Whren, 517 U.S. at 813. In Whren, this Court implemented a purely objective test for evaluating the constitutionality of a traffic stop, which eliminated all motivation of the individual officer and asks only whether any probable cause for the stop existed. In Terry v. Ohio, this Court stated that the objective test should be analyzed as follows: "...and in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" Terry, 392 U.S. at 21, 22.

As is evident from the plain language of the objective test, the role of the judge is to determine whether the facts available to the officer would warrant a man of reasonable caution in believing that criminal activity was afoot. Terry, 392 U.S. at 30. Under the *objective* test, the thought process and the legal analysis of the stopping officer are irrelevant. Whren, 517 U.S. at 813. The Florida Supreme Court's Dobrin opinion however, misinterprets the objective test as set forth in Whren and Terry. Specifically, the Florida Supreme Court determined

that the circuit court applied the correct law. "We direct reinstatement of the circuit court's order because we read the circuit court's order to have applied the objective test." Dobrin, 874 So.2d at 1174. The circuit court held that its analysis was limited to, "what in fact the officer did and why he did it." Dobrin v. Department of Highway Safety and Motor Vehicles, 9 Fla. L. Weekly Supp. at 356. The circuit court also held that "[t]his Court finds that it cannot uphold the stop on a basis of what the officer could have done, rather it must only analyze what in fact the officer did and why he did it."[11] Id. "The arrest report never states that the officer thought speeding was a reason for the stop, 'so the court may not engage in speculation that the officer's actions in stopping the vehicle are now justified by the fact that there may have been speeding, when in fact the reason articulated for the stop was the "failure to maintain a single lane" facts'." Id. at 356. In addition, the circuit court refused to consider impairment as a reason for the stop, holding: "the arrest report never states that the officer thought impairment was a reason for the stop. As such, this Court may not engage in speculation that the stop may have been justified by the fact of intoxication or impairment when in fact the reason articulated for the stop was Failure to Maintain a Single Lane." Id. at 356.

The circuit court obviously applied a subjective test because the circuit court limited its consideration to what Officer

---

[11] In his dissenting opinion in Dobrin, Justice Cantero held that this standard applied by the circuit court, and upheld by the majority's opinion, is in fact a subjective test. Dobrin, 874 So.2d at 1175. "[O]n the other hand, the circuit court rejected an objective test altogether. As the district court noted, the circuit court used a much different analysis. As quoted from the district court's opinion, it stated the issues as follows: 'this court finds that it cannot ~~uphold the~~ stop on a basis of what the officer could have done, rather it must only analyze *what in fact the officer did and why he did it.*' 829 So.2d at 922 (emphasis added). This is a subjective test." Dobrin, 874 So.2d at 1175 (Cantero, J. dissenting).

Thomas was thinking, instead of what a man of reasonable caution - who had observed what Officer Thomas had observed – would have been thinking. By holding that the circuit court applied the correct law and reinstating the circuit court's order, the Florida Supreme Court upheld and has effectively put into practice a subjective test to determine the reasonableness of vehicle stops in Florida. The Florida Supreme Court summarized the circuit court's holding with approval as follows:

> (1) the record did not competently or substantially support the officer's stop of Dobrin's vehicle on the basis of the failure to maintain a single lane because the facts contained in the arrest report did not state any evidence that Dobrin went beyond a single lane; (2) the record did not competently or substantially support the officer's stop of Dobrin's vehicle on the basis of speeding because there was no indication in the arrest report of what the speed limit was, that Dobrin was driving in excess of the speed limit, or that the reason for the officer's stop was in fact speeding; and (3) the record did not competently or substantially support the officer's stop of Dobrin's vehicle to determine whether Dobrin was ill, tired, or driving under the influence because the arrest report did not indicate that the reason for the stop was that the officer thought Dobrin was impaired.

Dobrin, 874 So.2d at 1174. (emphasis added).

Based on the foregoing reasoning, the Florida Supreme Court upheld the circuit court's order agreeing that the record did not provide probable cause for the stop. Like the circuit court, the Florida Supreme Court limited its consideration to

the lawfulness of the stop for failure to maintain a single lane. Dobrin 874 So.2d at 1173, 1174. In doing so, the Florida Supreme court applied a subjective test to analyze the reasonableness of Dobrin's stop. Rather than evaluating the facts recited by Officer Thomas from an *objective* standpoint to determine whether they justified the reasonableness of the stop for any valid reason, the Florida Supreme Court limited its consideration to the lawfulness of the stop for failure to maintain a single lane because that was the reason articulated in Officer Thomas' police report.[12] The Florida Supreme Court, therefore, refused to consider whether the facts in the arrest report supported any other valid reason for the stop stating, "the record did not competently or substantially support the officer's stop of Dobrin's vehicle to determine whether Dobrin was ill, tired, or driving under the influence because the arrest report did not indicate that the reason for the stop was that the officer thought Dobrin was impaired." Dobrin, 874 So.2d at 1174.

The Florida Supreme Court's misinterpretation of this Court's opinion in Whren and the "objective test" dictated the Court's conclusion. In its Dobrin decision, the Court relying on Whren stated, "[t]he only concern under the Fourth Amendment is the validity of the basis asserted by the officer involved in the stop." Dobrin, 874 So.2d at 1173. This is clearly a misinterpretation of the *objective test* as well as this Court's holding in Whren. The Florida Supreme Court is plainly concerned with evaluating the reasonableness of a stop based on what is in the mind of the officer. The Florida Supreme Court's Dobrin opinion now requires judges to only

---

[12] Officer Thomas cited Dobrin for failure to maintain a single lane. However, the Officer did not issue a citation for speeding. Officer Thomas described Dobrin's erratic driving pattern; but did not specifically state that he was suspicious of impairment. (App. H, *Infra*, 44).

examine the "validity of the basis asserted by the officer" when evaluating the constitutionality of a Fourth Amendment intrusion. Dobrin, 874 So. 2d at 1173.

The Florida Supreme Court's Fourth Amendment analysis is not correct. The Florida Supreme Court should not have limited their analysis to what Officer Thomas was actually thinking. Instead, they should have considered what a man of reasonable caution – who had observed what Officer Thomas had observed – would have been thinking. Terry, 392 U.S. at 21, 22. Under the objective test, the legal analysis of the stopping officer should be irrelevant. However, that is no longer the state of the law in Florida. If the Florida Supreme Court's Dobrin opinion is not corrected, the Fourth Amendment in Florida will be remarkably different than the Fourth Amendment in the rest of the country.

Simply put, the Florida Supreme Court's Dobrin opinion has thrown Florida's seizure and seizure law into turmoil. The Florida Constitution (Article 1, Section 12) requires that Florida search and seizure law be construed in conformity with the Fourth Amendment as interpreted by the United States Supreme Court. Only this Court can correct the Florida Supreme Court's mistake.

B. The Effect Of The Florida Supreme Court's Application Of A Subjective Test Will Impact Florida Law Well Beyond The Arena Of A Driver's License Suspension.

The Florida Supreme Court's adoption of a subjective test has far reaching consequences outside of a case such as this, which involves only the suspension of a driving privilege. According to the Florida Supreme Court's Dobrin opinion, the events observed by an officer are no longer subject to objective interpretation *by a judge* to determine the lawfulness of the stop. Under Dobrin, if the reason given by the stopping officer

turns out to be legally incorrect, the stop will be deemed unconstitutional. Under Dobrin, a police officer cannot be right for the wrong reason. Under Dobrin, the State of Florida will now be limited to prosecuting criminals based on the sagacity of the particular officer who testifies at the motion to suppress hearing. This reasoning is in conflict with the holding of this Court "that the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken so long as the circumstances, viewed objectively, justify that action." Scott, 436 U.S. at 138.

Judges should not be concerned with what Officer Thomas was thinking legally. Judges should care only 1) what Officer Thomas observed; 2) whether Officer Thomas was telling the truth about what he observed; and 3) whether those facts permitted a lawful search or seizure. Under Dobrin, in Florida, if the reason for the detention articulated by the officer is legally not justifiable judges will be forced to suppress evidence even though the detention is legally permissible on grounds not understood by the stopping officer. Dobrin puts the people of the State of Florida at risk.

II. THE EFFECT OF THE FLORIDA SUPREME COURT'S DOBRIN OPINION IS TO REJECT A FINDING THAT THE REASONABLENESS OF A FOURTH AMENDMENT INTRUSION MAY BE BASED ON REASONABLE SUSPICION.

In Whren v. U.S., 517 U.S. 806 (1996), the issue before the Court was whether the subjective motivations of the officer invalidated an otherwise valid stop based on probable cause. Because the parties conceded that probable cause for the stop existed, this Court never entered a discussion as to whether the

stop was reasonable on other grounds - such as reasonable suspicion.

A traffic stop is not necessarily unconstitutional because the officer does not witness a violation of a traffic law. A traffic stop also passes constitutional muster when there is a reasonable suspicion that the detainee has committed, is committing, or is about to commit a crime. Terry, 392 U.S. at 21-22 (1968). Whren did not change the law – except perhaps in Florida - that the stop of a vehicle is lawful when there is "reasonable suspicion" of criminal activity. [13]

In Florida, the State's Supreme Court in Dobrin refused to take its analysis beyond a determination of whether the reasons articulated by the officer in his police report justified probable cause for the stop. "As the United States Supreme Court

---

[13] State v. Malone, 683 So.2d 1 (Wis. 2004)("The seizure here was a traffic stop, and we evaluate the reasonableness of Hyer's conduct under principles similar to those used to address so-called Terry stop."); Walker v. State, 2004 WL 1753406 (Mis. Aug. 5, 2004)(Police officer's acts of following Walker's truck and making investigatory stop must be based on reasonable suspicion ...Probable cause is not necessary to make an investigative stop); People v. Gonzalez, 204 Ill.2d 220, 789 N.E. 260, 273 Ill. Dec. 360 (Il. 2003)(In determining the reasonableness of a traffic stop, courts are guided by the Supreme Court's observation that the usual traffic stop is more analogous to a Terry investigative stop); State v. Fields, 662 N.W. 2d 242 (N.D. 2003)(The constitutionality of an investigative detention is judged under the framework established in Terry v. Ohio (citation omitted)); Damato v. State, 64 P.3d 700 (Wyo. 2003)(A routine traffic stop is more analogous to an investigative detention than a custodial arrest and such stops are analyzed under the principles developed for investigative detentions set for the in Terry v. Ohio (citation omitted)); United States v. Jones, 269 F.3d 919, 924 (8th Cir. 2001)(a traffic stop is governed by the principles of Terry v. Ohio (citation omitted)); State v. Dickey, 152 N.J. 468, 476, 706 A.2d 180, 184 (1998); McGaughey v. Oklahoma, 37 P.2d 130, 136 (Okla.Crim.App. 2001); Freeman v. Texas. 62 S.W.3d 883, 886 (Tex.Ct. App.2001).

held in Whren, the validity of a traffic stop is determined by considering whether the officer who stopped the vehicle had probable cause to do so." Dobrin, 874 So.2d at 1174. By limiting its consideration to whether there was probable cause to stop Dobrin for the civil traffic infraction of failure to maintain a single lane, the Florida Supreme Court misapplied this Court's holding in Whren and, in essence, rejected the long-standing standard of "reasonable suspicion" to initiate an investigative traffic stop.

The Florida Supreme Court's holding in Dobrin requires a reasonableness standard not intended by this Court in Whren. In fact, appellate courts throughout Florida are misinterpreting Whren. The opinions in Jones v. State, 842 So.2d 889 (Fla. 2d DCA 2003), Ellis v. State, 755 So.2d 767 (Fla. 4th DCA 2000) and Bender v. State, 737 So. 2d 1181 (Fla. 1st DCA 1999) make it is apparent that Florida appellate judges are interpreting Fourth Amendment doctrine to mean that there are two different constitutional standards for evaluating the lawfulness of traffic stops depending on whether the underlying suspected violation is civil or criminal. In Florida, the police must have either 1) *reasonable suspicion* of a crime or 2) *probable cause* of a civil traffic infraction before they can lawfully conduct an investigative detention. Whren does not mandate the foregoing conclusion. Whren explained that a traffic stop is reasonable – and thus constitutional – if the stopping officer had probable cause to believe that a civil traffic violation had been committed. Whren spoke to pretextual stops and did not address the reasonable suspicion standard for a vehicle stop. Whren does not stand for the proposition that it is unreasonable – and thus unconstitutional – for an officer to stop a driver when the officer has only

reasonable suspicion that a civil traffic violation has occurred.[14]

The citizens of Florida should not be put in the frightening position that the police need to follow a potential DUI suspect until such time as the police officer has probable cause to believe that the driver has committed a civil traffic infraction. Once a police officer has "reasonable suspicion" of any violation of law (civil or criminal), the police officer should have the constitutional authority to conduct a temporary detention of the driver of the vehicle to determine if a violation of law has occurred. The instant case gives this Court an opportunity to clarify Whren.

---

[14] Florida judges are not the only ones confused by the ambiguity that Whren created. The Sixth Circuit while recognizing a conflict within its Circuit on the issue of whether police may stop a vehicle based on reasonable suspicion of a traffic violation has suggested that there are two constitutional standards for traffic stops depending on the nature of the suspected violation of law. Gaddis ex rel. Gaddis v. Redford TP, 364 F.3d 763, n.6 at 771 (6th Cir. 2004). Likewise, the Eighth Circuit has held that a vehicle stop is reasonable if it is supported by either probable cause to believe that a traffic violation has occurred or reasonable suspicion of a crime. See U.S. v. Ramos-Caraballo, 375 F.3d 797, 800-801 (8th Cir. 2004). However, in the Tenth Circuit a traffic stop is valid under the Fourth Amendment if the stop is based on an observed traffic violation or if the police officer has *reasonable articulable suspicion* that a *traffic or equipment violation* has occurred or is occurring. U.S. v. Callerman, 273 F.3d 1284, 1286 (10th Cir. 2001)(quoting United States v. Botero-Ospina, 71 F.3d 783, 787, (10th Cir.1995), cert. denied, 518 U.S. 1007, 116 S.Ct. 2529, 135 L.Ed.2d 1052 (10th Cir. 1996) (en banc), "[w]hile either probable cause or reasonable suspicion is sufficient to justify a traffic stop, only the lesser requirement of reasonable suspicion is necessary.") See; U.S. v. Vercher, 358 F.3d 1257, 1261 (10th Cir. 2004).

The Florida Supreme Court applied an incorrect legal standard when it evaluated the constitutionality of the stop of Dobrin's vehicle. The correct inquiry was whether the established facts set forth in the officer's arrest report justified the reasonableness of the investigative detention. The reasonableness of the detention is justified when the facts - viewed objectively - established that the officer had reasonable suspicion of a violation of any state law. By limiting its consideration to probable cause, the Florida Supreme Court has issued an opinion that requires judges to evaluate the reasonableness of a traffic stop under a standard that is in conflict with opinions of this Court. Terry; Whren.

CONCLUSION

For the reasons stated, the Court should grant review.

RESPECTFULLY SUBMITTED,

ENOCH J. WHITNEY
GENERAL COUNSEL

HEATHER ROSE CRAMER
ASSISTANT GENERAL COUNSEL

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES
6801 LAKE WORTH ROAD
SUITE 230
LAKE WORTH, FLORIDA 33467